

HOUSE BILL NO. 528

INTRODUCED BY D. BROWN

A BILL FOR AN ACT ENTITLED: "AN ACT DOUBLING THE PENALTY FOR A SEXUAL OFFENSE IF THE OFFENDER IS A TEACHER AND THE VICTIM IS A MINOR; AMENDING SECTIONS 45-2-101, 45-5-502, 45-5-503, 45-5-504, 45-5-505, 45-5-507, 45-5-602, 45-5-603, 45-5-622, 45-5-625, AND 45-5-627, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 45-2-101, MCA, is amended to read:

"45-2-101. General definitions. Unless otherwise specified in the statute, all words must be taken in the objective standard rather than in the subjective, and unless a different meaning plainly is required, the following definitions apply in this title:

(1) "Acts" has its usual and ordinary meaning and includes any bodily movement, any form of communication, and when relevant, a failure or omission to take action.

(2) "Administrative proceeding" means a proceeding the outcome of which is required to be based on a record or documentation prescribed by law or in which a law or a regulation is particularized in its application to an individual.

(3) "Another" means a person or persons other than the offender.

(4) (a) "Benefit" means gain or advantage or anything regarded by the beneficiary as gain or advantage, including benefit to another person or entity in whose welfare the beneficiary is interested.

(b) Benefit does not include an advantage promised generally to a group or class of voters as a consequence of public measures that a candidate engages to support or oppose.

(5) "Bodily injury" means physical pain, illness, or an impairment of physical condition and includes mental illness or impairment.

(6) "Child" or "children" means any individual or individuals under 18 years of age, unless a different age is specified.

(7) "Cohabit" means to live together under the representation of being married.

(8) "Common scheme" means a series of acts or omissions motivated by a purpose to accomplish a single criminal objective or by a common purpose or plan that results in the repeated commission of the same

1 offense or that affects the same person or the same persons or the property of the same person or persons.

2 (9) "Computer" means an electronic device that performs logical, arithmetic, and memory functions by
3 the manipulation of electronic or magnetic impulses and includes all input, output, processing, storage, software,
4 or communication facilities that are connected or related to that device in a system or network.

5 (10) "Computer network" means the interconnection of communication systems between computers or
6 computers and remote terminals.

7 (11) "Computer program" means an instruction or statement or a series of instructions or statements, in
8 a form acceptable to a computer, that in actual or modified form permits the functioning of a computer or computer
9 system and causes it to perform specified functions.

10 (12) "Computer services" include but are not limited to computer time, data processing, and storage
11 functions.

12 (13) "Computer software" means a set of computer programs, procedures, and associated documentation
13 concerned with the operation of a computer system.

14 (14) "Computer system" means a set of related, connected, or unconnected devices, computer software,
15 or other related computer equipment.

16 (15) "Conduct" means an act or series of acts and the accompanying mental state.

17 (16) "Conviction" means a judgment of conviction or sentence entered upon a plea of guilty or nolo
18 contendere or upon a verdict or finding of guilty of an offense rendered by a legally constituted jury or by a court
19 of competent jurisdiction authorized to try the case without a jury.

20 (17) "Correctional institution" means a state prison, detention center, multijurisdictional detention center,
21 private detention center, regional correctional facility, private correctional facility, or other institution for the
22 incarceration of inmates under sentence for offenses or the custody of individuals awaiting trial or sentence for
23 offenses.

24 (18) "Deception" means knowingly to:

25 (a) create or confirm in another an impression that is false and that the offender does not believe to be
26 true;

27 (b) fail to correct a false impression that the offender previously has created or confirmed;

28 (c) prevent another from acquiring information pertinent to the disposition of the property involved;

29 (d) sell or otherwise transfer or encumber property without disclosing a lien, adverse claim, or other legal
30 impediment to the enjoyment of the property, whether the impediment is or is not of value or is or is not a matter

1 of official record; or

2 (e) promise performance that the offender does not intend to perform or knows will not be performed.
3 Failure to perform, standing alone, is not evidence that the offender did not intend to perform.

4 (19) "Defamatory matter" means anything that exposes a person or a group, class, or association to
5 hatred, contempt, ridicule, degradation, or disgrace in society or to injury to the person's or its business or
6 occupation.

7 (20) "Deprive" means:

8 (a) to withhold property of another:

9 (i) permanently;

10 (ii) for such a period as to appropriate a portion of its value; or

11 (iii) with the purpose to restore it only upon payment of reward or other compensation; or

12 (b) to dispose of the property of another and use or deal with the property so as to make it unlikely that
13 the owner will recover it.

14 (21) "Deviate sexual relations" means sexual contact or sexual intercourse between two persons of the
15 same sex or any form of sexual intercourse with an animal.

16 (22) "Document" means, with respect to offenses involving the medicaid program, any application, claim,
17 form, report, record, writing, or correspondence, whether in written, electronic, magnetic, microfilm, or other form.

18 (23) "Felony" means an offense in which the sentence imposed upon conviction is death or imprisonment
19 in a state prison for a term exceeding 1 year.

20 (24) "Forcible felony" means a felony that involves the use or threat of physical force or violence against
21 any individual.

22 (25) A "frisk" is a search by an external patting of a person's clothing.

23 (26) "Government" includes a branch, subdivision, or agency of the government of the state or a locality
24 within it.

25 (27) "Harm" means loss, disadvantage, or injury or anything so regarded by the person affected, including
26 loss, disadvantage, or injury to a person or entity in whose welfare the affected person is interested.

27 (28) A "house of prostitution" means a place where prostitution or promotion of prostitution is regularly
28 carried on by one or more persons under the control, management, or supervision of another.

29 (29) "Human being" means a person who has been born and is alive.

30 (30) An "illegal article" is an article or thing that is prohibited by statute, rule, or order from being in the

possession of a person subject to official detention.

(31) "Inmate" means a person who is confined in a correctional institution.

(32) (a) "Intoxicating substance" means a controlled substance, as defined in Title 50, chapter 32, and an alcoholic beverage, including but not limited to a beverage containing 1/2 of 1% or more of alcohol by volume.

(b) Intoxicating substance does not include dealcoholized wine or a beverage or liquid produced by the process by which beer, ale, port, or wine is produced if it contains less than 1/2 of 1% of alcohol by volume.

(33) An "involuntary act" means an act that is:

(a) a reflex or convulsion;

(b) a bodily movement during unconsciousness or sleep;

(c) conduct during hypnosis or resulting from hypnotic suggestion; or

(d) a bodily movement that otherwise is not a product of the effort or determination of the actor, either conscious or habitual.

(34) "Juror" means a person who is a member of a jury, including a grand jury, impaneled by a court in this state in an action or proceeding or by an officer authorized by law to impanel a jury in an action or proceeding. The term "juror" also includes a person who has been drawn or summoned to attend as a prospective juror.

(35) "Knowingly"--a person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when the person is aware of the person's own conduct or that the circumstance exists. A person acts knowingly with respect to the result of conduct described by a statute defining an offense when the person is aware that it is highly probable that the result will be caused by the person's conduct. When knowledge of the existence of a particular fact is an element of an offense, knowledge is established if a person is aware of a high probability of its existence. Equivalent terms, such as "knowing" or "with knowledge", have the same meaning.

(36) "Medicaid" means the Montana medical assistance program provided for in Title 53, chapter 6.

(37) "Medicaid agency" has the meaning in 53-6-155.

(38) "Medicaid benefit" means the provision of anything of pecuniary value to or on behalf of a recipient under the medicaid program.

(39) (a) "Medicaid claim" means a communication, whether in oral, written, electronic, magnetic, or other form:

(i) that is used to claim specific services or items as payable or reimbursable under the medicaid

1 program; or

2 (ii) that states income, expense, or other information that is or may be used to determine entitlement to
3 or the rate of payment under the medicaid program.

4 (b) The term includes related documents submitted as a part of or in support of the claim.

5 (40) "Mentally defective" means that a person suffers from a mental disease or defect that renders the
6 person incapable of appreciating the nature of the person's own conduct.

7 (41) "Mentally incapacitated" means that a person is rendered temporarily incapable of appreciating or
8 controlling the person's own conduct as a result of the influence of an intoxicating substance.

9 (42) "Misdemeanor" means an offense for which the sentence imposed upon conviction is imprisonment
10 in the county jail for a term or a fine, or both, or for which the sentence imposed is imprisonment in a state prison
11 for a term of 1 year or less.

12 (43) "Negligently"--a person acts negligently with respect to a result or to a circumstance described by
13 a statute defining an offense when the person consciously disregards a risk that the result will occur or that the
14 circumstance exists or when the person disregards a risk of which the person should be aware that the result will
15 occur or that the circumstance exists. The risk must be of a nature and degree that to disregard it involves a gross
16 deviation from the standard of conduct that a reasonable person would observe in the actor's situation. "Gross
17 deviation" means a deviation that is considerably greater than lack of ordinary care. Relevant terms, such as
18 "negligent" and "with negligence", have the same meaning.

19 (44) "Nolo contendere" means a plea in which the defendant does not contest the charge or charges
20 against the defendant and neither admits nor denies the charge or charges.

21 (45) "Obtain" means:

22 (a) in relation to property, to bring about a transfer of interest or possession, whether to the offender or
23 to another; and

24 (b) in relation to labor or services, to secure the performance of the labor or service.

25 (46) "Obtains or exerts control" includes but is not limited to the taking, the carrying away, or the sale,
26 conveyance, or transfer of title to, interest in, or possession of property.

27 (47) "Occupied structure" means any building, vehicle, or other place suitable for human occupancy or
28 night lodging of persons or for carrying on business, whether or not a person is actually present, including any
29 outbuilding that is immediately adjacent to or in close proximity to an occupied structure and that is habitually
30 used for personal use or employment. Each unit of a building consisting of two or more units separately secured

1 or occupied is a separate occupied structure.

2 (48) "Offender" means a person who has been or is liable to be arrested, charged, convicted, or punished
3 for a public offense.

4 (49) "Offense" means a crime for which a sentence of death or of imprisonment or a fine is authorized.
5 Offenses are classified as felonies or misdemeanors.

6 (50) (a) "Official detention" means imprisonment resulting from a conviction for an offense, confinement
7 for an offense, confinement of a person charged with an offense, detention by a peace officer pursuant to arrest,
8 detention for extradition or deportation, or lawful detention for the purpose of the protection of the welfare of the
9 person detained or for the protection of society.

10 (b) Official detention does not include supervision of probation or parole, constraint incidental to release
11 on bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or
12 a weapon to escape.

13 (51) "Official proceeding" means a proceeding heard or that may be heard before a legislative, a judicial,
14 an administrative, or another governmental agency or official authorized to take evidence under oath, including
15 any referee, hearings examiner, commissioner, notary, or other person taking testimony or deposition in
16 connection with the proceeding.

17 (52) "Other state" means a state or territory of the United States, the District of Columbia, and the
18 Commonwealth of Puerto Rico.

19 (53) "Owner" means a person other than the offender who has possession of or other interest in the
20 property involved, even though the interest or possession is unlawful, and without whose consent the offender
21 has no authority to exert control over the property.

22 (54) "Party official" means a person who holds an elective or appointive post in a political party in the
23 United States by virtue of which the person directs or conducts or participates in directing or conducting party
24 affairs at any level of responsibility.

25 (55) "Peace officer" means a person who by virtue of the person's office or public employment is vested
26 by law with a duty to maintain public order or to make arrests for offenses while acting within the scope of the
27 person's authority.

28 (56) "Pecuniary benefit" is benefit in the form of money, property, commercial interests, or anything else
29 the primary significance of which is economic gain.

30 (57) "Person" includes an individual, business association, partnership, corporation, government, or other

1 legal entity and an individual acting or purporting to act for or on behalf of a government or subdivision of
2 government.

3 (58) "Physically helpless" means that a person is unconscious or is otherwise physically unable to
4 communicate unwillingness to act.

5 (59) "Possession" is the knowing control of anything for a sufficient time to be able to terminate control.

6 (60) "Premises" includes any type of structure or building and real property.

7 (61) "Property" means a tangible or intangible thing of value. Property includes but is not limited to:

8 (a) real estate;

9 (b) money;

10 (c) commercial instruments;

11 (d) admission or transportation tickets;

12 (e) written instruments that represent or embody rights concerning anything of value, including labor or
13 services, or that are otherwise of value to the owner;

14 (f) things growing on, affixed to, or found on land and things that are part of or affixed to a building;

15 (g) electricity, gas, and water;

16 (h) birds, animals, and fish that ordinarily are kept in a state of confinement;

17 (i) food and drink, samples, cultures, microorganisms, specimens, records, recordings, documents,
18 blueprints, drawings, maps, and whole or partial copies, descriptions, photographs, prototypes, or models thereof;

19 (j) other articles, materials, devices, substances, and whole or partial copies, descriptions, photographs,
20 prototypes, or models thereof that constitute, represent, evidence, reflect, or record secret scientific, technical,
21 merchandising, production, or management information or a secret designed process, procedure, formula,
22 invention, or improvement; and

23 (k) electronic impulses, electronically processed or produced data or information, commercial
24 instruments, computer software or computer programs, in either machine- or human-readable form, computer
25 services, any other tangible or intangible item of value relating to a computer, computer system, or computer
26 network, and copies thereof.

27 (62) "Property of another" means real or personal property in which a person other than the offender has
28 an interest that the offender has no authority to defeat or impair, even though the offender may have an interest
29 in the property.

30 (63) "Public place" means a place to which the public or a substantial group has access.

(64) (a) "Public servant" means an officer or employee of government, including but not limited to legislators, judges, and firefighters, and a person participating as a juror, adviser, consultant, administrator, executor, guardian, or court-appointed fiduciary. The term "public servant" includes one who has been elected or designated to become a public servant.

(b) The term does not include witnesses.

(65) "Purposely"--a person acts purposely with respect to a result or to conduct described by a statute defining an offense if it is the person's conscious object to engage in that conduct or to cause that result. When a particular purpose is an element of an offense, the element is established although the purpose is conditional, unless the condition negatives the harm or evil sought to be prevented by the law defining the offense. Equivalent terms, such as "purpose" and "with the purpose", have the same meaning.

(66) (a) "Serious bodily injury" means bodily injury that:

(i) creates a substantial risk of death;

(ii) causes serious permanent disfigurement or protracted loss or impairment of the function or process of a bodily member or organ; or

(iii) at the time of injury, can reasonably be expected to result in serious permanent disfigurement or protracted loss or impairment of the function or process of a bodily member or organ.

(b) The term includes serious mental illness or impairment.

(67) "Sexual contact" means touching of the sexual or other intimate parts of the person of another, directly or through clothing, in order to knowingly or purposely:

(a) cause bodily injury to or humiliate, harass, or degrade another; or

(b) arouse or gratify the sexual response or desire of either party.

(68) (a) "Sexual intercourse" means penetration of the vulva, anus, or mouth of one person by the penis of another person, penetration of the vulva or anus of one person by a body member of another person, or penetration of the vulva or anus of one person by a foreign instrument or object manipulated by another person to knowingly or purposely:

(i) cause bodily injury to or humiliate, harass, or degrade; or

(ii) arouse or gratify the sexual response or desire of either party.

(b) For purposes of subsection (68)(a), any penetration, however slight, is sufficient.

(69) "Solicit" or "solicitation" means to command, authorize, urge, incite, request, or advise another to commit an offense.

(70) "State" or "this state" means the state of Montana, all the land and water in respect to which the state of Montana has either exclusive or concurrent jurisdiction, and the air space above the land and water.

(71) "Statute" means an act of the legislature of this state.

(72) "Stolen property" means property over which control has been obtained by theft.

(73) A "stop" is the temporary detention of a person that results when a peace officer orders the person to remain in the peace officer's presence.

(74) "Tamper" means to interfere with something improperly, meddle with it, make unwarranted alterations in its existing condition, or deposit refuse upon it.

(75) "Teacher" means a full-time or part-time, paid or unpaid, instructor, student teacher, teacher's aide, principal, assistant principal or other administrator, counselor, librarian, or librarian's aide in a public or private primary or secondary school.

~~(75)~~(76) "Telephone" means any type of telephone, including but not limited to a corded, uncorded, cellular, or satellite telephone.

~~(76)~~(77) "Threat" means a menace, however communicated, to:

(a) inflict physical harm on the person threatened or any other person or on property;

(b) subject any person to physical confinement or restraint;

(c) commit a criminal offense;

(d) accuse a person of a criminal offense;

(e) expose a person to hatred, contempt, or ridicule;

(f) harm the credit or business repute of a person;

(g) reveal information sought to be concealed by the person threatened;

(h) take action as an official against anyone or anything, withhold official action, or cause the action or withholding;

(i) bring about or continue a strike, boycott, or other similar collective action if the person making the threat demands or receives property that is not for the benefit of groups that the person purports to represent;

or

(j) testify or provide information or withhold testimony or information with respect to another's legal claim or defense.

~~(77)~~(78) (a) "Value" means the market value of the property at the time and place of the crime or, if the market value cannot be satisfactorily ascertained, the cost of the replacement of the property within a reasonable

time after the crime. If the offender appropriates a portion of the value of the property, the value must be determined as follows:

(i) The value of an instrument constituting an evidence of debt, such as a check, draft, or promissory note, is considered the amount due or collectible. The figure is ordinarily the face amount of the indebtedness less any portion of the indebtedness that has been satisfied.

(ii) The value of any other instrument that creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation is considered the amount of economic loss that the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(iii) The value of electronic impulses, electronically produced data or information, computer software or programs, or any other tangible or intangible item relating to a computer, computer system, or computer network is considered to be the amount of economic loss that the owner of the item might reasonably suffer by virtue of the loss of the item. The determination of the amount of economic loss includes but is not limited to consideration of the value of the owner's right to exclusive use or disposition of the item.

(b) When it cannot be determined if the value of the property is more or less than \$1,000 by the standards set forth in subsection ~~(77)(a)~~ (78)(a), its value is considered to be an amount less than \$1,000.

(c) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property.

~~(78)(79)~~ "Vehicle" means a device for transportation by land, water, or air or by mobile equipment, with provision for transport of an operator.

~~(79)(80)~~ "Weapon" means an instrument, article, or substance that, regardless of its primary function, is readily capable of being used to produce death or serious bodily injury.

~~(80)(81)~~ "Witness" means a person whose testimony is desired in an official proceeding, in any investigation by a grand jury, or in a criminal action, prosecution, or proceeding."

Section 2. Section 45-5-502, MCA, is amended to read:

"45-5-502. Sexual assault. (1) A person who knowingly subjects another person to any sexual contact without consent commits the offense of sexual assault.

(2) ~~(a)~~ Except as provided in subsection (2)(b), a person convicted of sexual assault shall be fined not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(b) Unless a greater penalty applies as provided in Title 46, chapter 18, or subsection (3) of this section,

1 if the victim is a minor, a teacher who is convicted of violation of this section shall be punished as provided in
2 [section 12] but may not be imprisoned in the county jail for more than 1 year.

3 (3) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if
4 the offender inflicts bodily injury upon anyone in the course of committing sexual assault, the offender shall be
5 punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years, unless
6 the judge makes a written finding that there is good cause to impose a term of less than 4 years and imposes a
7 term of less than 4 years, or more than 100 years and may be fined not more than \$50,000.

8 (4) An act "in the course of committing sexual assault" includes an attempt to commit the offense or flight
9 after the attempt or commission.

10 (5) (a) Subject to subsections (5)(b) and (5)(c), consent is ineffective under this section if the victim is:

11 (i) incarcerated in an adult or juvenile correctional, detention, or treatment facility or is on probation or
12 parole and the perpetrator is an employee, contractor, or volunteer of the supervising authority and has
13 supervisory or disciplinary authority over the victim, unless the act is part of a lawful search;

14 (ii) less than 14 years old and the offender is 3 or more years older than the victim;

15 (iii) receiving services from a youth care facility, as defined in 52-2-602, and the perpetrator:

16 (A) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and

17 (B) is an employee, contractor, or volunteer of the youth care facility; or

18 (iv) admitted to a mental health facility, as defined in 53-21-102, is admitted to a community-based facility
19 or a residential facility, as those terms are defined in 53-20-102, or is receiving community-based services, as
20 defined in 53-20-102, and the perpetrator:

21 (A) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and

22 (B) is an employee, contractor, or volunteer of the facility or community-based service.

23 (b) Subsection (5)(a)(i) does not apply if one of the parties is on probation or parole and the other party
24 is a probation or parole officer of the supervising authority and the parties are married to each other.

25 (c) Subsections (5)(a)(iii) and (5)(a)(iv) do not apply if the individuals are married to each other and one
26 of the individuals involved is a patient in or resident of a facility, is a recipient of community-based services, or
27 is receiving services from a youth care facility and the other individual is an employee, contractor, or volunteer
28 of the facility or community-based service."

29
30 **Section 3.** Section 45-5-503, MCA, is amended to read:

"45-5-503. Sexual intercourse without consent. (1) A person who knowingly has sexual intercourse

without consent with another person commits the offense of sexual intercourse without consent. A person may not be convicted under this section based on the age of the person's spouse, as provided in 45-5-501(1)(a)(ii)(D).

(2) (a) Except as provided in subsection (2)(b), a person convicted of sexual intercourse without consent shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 2 years or more than 100 years and may be fined not more than \$50,000, except as provided in 46-18-219, 46-18-222, and subsections (3) and (4) of this section.

(b) Unless a greater penalty applies as provided in Title 46, chapter 18, or subsections (3) through (5) of this section, if the victim is minor, a teacher who is convicted of a violation of this section shall be punished as provided in [section 12].

(3) (a) If the victim is less than 16 years old and the offender is 4 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse without consent, the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than \$50,000, except as provided in 46-18-219 and 46-18-222.

(b) If two or more persons are convicted of sexual intercourse without consent with the same victim in an incident in which each offender was present at the location where another offender's offense occurred during a time period in which each offender could have reasonably known of the other's offense, each offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 5 years or more than 100 years and may be fined not more than \$50,000, except as provided in 46-18-219 and 46-18-222.

(c) If the offender was previously convicted of an offense under this section or of an offense under the laws of another state or of the United States that if committed in this state would be an offense under this section and if the offender inflicted serious bodily injury upon a person in the course of committing each offense, the offender shall be:

(i) punished by death as provided in 46-18-301 through 46-18-310, unless the offender is less than 18 years of age at the time of the commission of the offense; or

(ii) punished as provided in 46-18-219.

(4) (a) If the victim was 12 years of age or younger and the offender was 18 years of age or older at the time of the offense, the offender:

(i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not

1 suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this
2 subsection (4)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender
3 is not eligible for parole.

4 (ii) may be fined an amount not to exceed \$50,000; and

5 (iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and
6 behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

7 (b) If the offender is released after the mandatory minimum period of imprisonment, the offender is
8 subject to supervision by the department of corrections for the remainder of the offender's life and shall participate
9 in the program for continuous, satellite-based monitoring provided for in 46-23-1010.

10 (5) In addition to any sentence imposed under subsection (2) or (3), after determining the financial
11 resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the
12 offender, if able, to pay the victim's reasonable medical and counseling costs that result from the offense. The
13 amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244.

14 (6) As used in subsections (3) and (4), an act "in the course of committing sexual intercourse without
15 consent" includes an attempt to commit the offense or flight after the attempt or commission."
16

17 **Section 4.** Section 45-5-504, MCA, is amended to read:

18 **"45-5-504. Indecent exposure.** (1) A person commits the offense of indecent exposure if the person
19 knowingly or purposely exposes the person's genitals under circumstances in which the person knows the
20 conduct is likely to cause affront or alarm in order to:

21 (a) abuse, humiliate, harass, or degrade another; or

22 (b) arouse or gratify the person's own sexual response or desire or the sexual response or desire of any
23 person.

24 (2) (a) ~~Except as provided in subsection (2)(d), a~~ person convicted of the offense of indecent exposure
25 shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for a term of not more than 6
26 months, or both.

27 (b) ~~On~~ Except as provided in subsection (2)(d), on a second conviction, the person shall be fined an
28 amount not to exceed \$1,000 or be imprisoned in the county jail for a term of not more than 1 year, or both.

29 (c) ~~On~~ Except as provided in subsection (2)(d), on a third or subsequent conviction, the person shall be
30 punished by life imprisonment or by imprisonment in a state prison for a term of not less than 5 years or more

1 than 100 years and may be fined not more than \$10,000.

2 (d) Unless a greater penalty applies as provided in Title 46, chapter 18, if the victim is a minor, a teacher
3 who is convicted of a violation of this section shall be punished as provided in [section 12]."

4
5 **Section 5.** Section 45-5-505, MCA, is amended to read:

6 **"45-5-505. Deviate sexual conduct.** (1) A person who knowingly engages in deviate sexual relations
7 or who causes another to engage in deviate sexual relations commits the offense of deviate sexual conduct.

8 (2) (a) ~~A~~ Except as provided in subsection (2)(b), a person convicted of the offense of deviate sexual
9 conduct shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not
10 to exceed \$50,000, or both.

11 (b) Unless a greater penalty applies as provided in Title 46, chapter 18, if the victim is a minor, a teacher
12 who is convicted of a violation of this section shall be punished as provided in [section 12].

13 (3) The fact that a person seeks testing or receives treatment for the HIV-related virus or another
14 sexually transmitted disease may not be used as a basis for a prosecution under this section and is not
15 admissible in evidence in a prosecution under this section."

16
17 **Section 6.** Section 45-5-507, MCA, is amended to read:

18 **"45-5-507. Incest.** (1) A person commits the offense of incest if the person knowingly marries, cohabits
19 with, has sexual intercourse with, or has sexual contact, as defined in 45-2-101, with an ancestor, a descendant,
20 a brother or sister of the whole or half blood, or any stepson or stepdaughter. The relationships referred to in this
21 subsection include blood relationships without regard to legitimacy, relationships of parent and child by adoption,
22 and relationships involving a stepson or stepdaughter.

23 (2) Consent is a defense under this section to incest with or upon a stepson or stepdaughter, but consent
24 is ineffective if the victim is less than 18 years old.

25 (3) (a) Except as provided in subsections (3)(b), (4), and (5), a person convicted of incest shall be
26 punished by life imprisonment or by imprisonment in the state prison for a term not to exceed 100 years or be
27 fined an amount not to exceed \$50,000.

28 (b) Unless a greater penalty applies as provided in Title 46, chapter 18, or subsection (4) or (5) of this
29 section, if the victim is a minor, a teacher who is convicted of a violation of this section shall be punished as
30 provided in [section 12].

(4) If the victim is under 16 years of age and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing incest, the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than \$50,000.

(5) (a) If the victim was 12 years of age or younger and the offender was 18 years of age or older at the time of the offense, the offender:

(i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (5)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.

(ii) may be fined an amount not to exceed \$50,000; and

(iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

(b) If the offender is released after the mandatory minimum period of imprisonment, the offender is subject to supervision by the department of corrections for the remainder of the offender's life and shall participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010.

(6) In addition to any sentence imposed under subsection (3), (4), or (5), after determining the financial resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable costs of counseling that result from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244."

Section 7. Section 45-5-602, MCA, is amended to read:

"45-5-602. Promoting prostitution. (1) A person commits the offense of promoting prostitution if the person purposely or knowingly commits any of the following acts:

(a) owns, controls, manages, supervises, resides in, or otherwise keeps, alone or in association with others, a house of prostitution or a prostitution business;

(b) procures an individual for a house of prostitution or a place in a house of prostitution for an individual;

(c) encourages, induces, or otherwise purposely causes another to become or remain a prostitute;

(d) solicits clients for another person who is a prostitute;

(e) procures a prostitute for a patron;

(f) transports an individual into or within this state with the purpose to promote that individual's engaging in prostitution or procures or pays for transportation with that purpose;

(g) leases or otherwise permits a place controlled by the offender, alone or in association with others, to be regularly used for prostitution or for the procurement of prostitution or fails to make reasonable effort to abate that use by ejecting the tenant, notifying law enforcement authorities, or using other legally available means; or

(h) lives in whole or in part upon the earnings of an individual engaging in prostitution, unless the person is the prostitute's minor child or other legal dependent incapable of self-support.

(2) (a) Except as provided in ~~subsection~~ subsections (2)(b) and (3), a person convicted of promoting prostitution shall be fined an amount not to exceed \$50,000 or be imprisoned in a state prison for a term not to exceed 10 years, or both.

(b) Unless a greater penalty applies as provided in Title 46, chapter 18, or subsection (3) of this section, if the prostitute is a minor, a teacher who is convicted of a violation of this section shall be punished as provided in [section 12].

(3) (a) If the prostitute was 12 years of age or younger and the prostitute's client was 18 years of age or older at the time of the offense, the offender:

(i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (3)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.

(ii) may be fined an amount not to exceed \$50,000; and

(iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

(b) If the offender is released after the mandatory minimum period of imprisonment, the offender is subject to supervision by the department of corrections for the remainder of the offender's life and shall participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010."

Section 8. Section 45-5-603, MCA, is amended to read:

"45-5-603. Aggravated promotion of prostitution. (1) A person commits the offense of aggravated promotion of prostitution if the person purposely or knowingly commits any of the following acts:

1 (a) compels another to engage in or promote prostitution;

2 (b) promotes prostitution of a child under the age of 18 years, whether or not the person is aware of the
3 child's age;

4 (c) promotes the prostitution of one's spouse, child, ward, or any person for whose care, protection, or
5 support the person is responsible.

6 (2) (a) Except as provided in subsections (2)(b), ~~and (2)(c), and (2)(d)~~, a person convicted of aggravated
7 promotion of prostitution shall be punished by:

8 (i) life imprisonment; or

9 (ii) imprisonment in a state prison for a term not to exceed 20 years or a fine in an amount not to exceed
10 \$50,000, or both.

11 (b) Except as provided in 46-18-219 and 46-18-222, a person convicted of aggravated promotion of
12 prostitution of a child, who at the time of the offense is under 18 years of age, shall be punished by:

13 (i) life imprisonment; or

14 (ii) imprisonment in a state prison for a term of not less than 4 years or more than 100 years or a fine in
15 an amount not to exceed \$100,000, or both.

16 (c) (i) If the prostitute was 12 years of age or younger and the prostitute's client was 18 years of age or
17 older at the time of the offense, the offender:

18 (A) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not
19 suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this
20 subsection (2)(c)(i)(A) except as provided in 46-18-222, and during the first 25 years of imprisonment, the
21 offender is not eligible for parole.

22 (B) may be fined an amount not to exceed \$50,000; and

23 (C) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and
24 behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

25 (ii) If the offender is released after the mandatory minimum period of imprisonment, the offender is subject
26 to supervision by the department of corrections for the remainder of the offender's life and shall participate in the
27 program for continuous, satellite-based monitoring provided for in 46-23-1010.

28 (d) Unless a greater penalty applies as provided in Title 46, chapter 18, or subsection (2)(b) or (2)(c) of
29 this section, if the victim is a minor, a teacher who is convicted of a violation of this section shall be punished as
30 provided in [section 12]."

1

2 **Section 9.** Section 45-5-622, MCA, is amended to read:

3 **"45-5-622. Endangering welfare of children.** (1) A parent, guardian, or other person supervising the
4 welfare of a child less than 18 years old commits the offense of endangering the welfare of children if the parent,
5 guardian, or other person knowingly endangers the child's welfare by violating a duty of care, protection, or
6 support.

7 (2) Except as provided in 16-6-305, a parent or guardian or any person who is 18 years of age or older,
8 whether or not the parent, guardian, or other person is supervising the welfare of the child, commits the offense
9 of endangering the welfare of children if the parent, guardian, or other person knowingly contributes to the
10 delinquency of a child less than:

11 (a) 18 years old by:

12 (i) supplying or encouraging the use of an intoxicating substance by the child; or

13 (ii) assisting, promoting, or encouraging the child to enter a place of prostitution; or

14 (b) 16 years old by assisting, promoting, or encouraging the child to:

15 (i) abandon the child's place of residence without the consent of the child's parents or guardian; or

16 (ii) engage in sexual conduct.

17 (3) A person, whether or not the person is supervising the welfare of a child less than 18 years of age,
18 commits the offense of endangering the welfare of children if the person, in the residence of a child, in a building,
19 structure, conveyance, or outdoor location where a child might reasonably be expected to be present, in a room
20 offered to the public for overnight accommodation, or in any multiple-unit residential building, knowingly:

21 (a) produces or manufactures methamphetamine or attempts to produce or manufacture
22 methamphetamine;

23 (b) possesses any material, compound, mixture, or preparation that contains any combination of the
24 items listed in 45-9-107 with intent to manufacture methamphetamine; or

25 (c) causes or permits a child to inhale, be exposed to, have contact with, or ingest methamphetamine
26 or be exposed to or have contact with methamphetamine paraphernalia.

27 (4) A parent, guardian, or other person supervising the welfare of a child less than 16 years of age may
28 verbally or in writing request a person who is 18 years of age or older and who has no legal right of supervision
29 or control over the child to stop contacting the child if the requester believes that the contact is not in the child's
30 best interests. If the person continues to contact the child, the parent, guardian, or other person supervising the

welfare of the child may petition or the county attorney may upon the person's request petition for an order of protection under Title 40, chapter 15. To the extent that they are consistent with this subsection, the provisions of Title 40, chapter 15, apply. A person who purposely or knowingly violates an order of protection commits the offense of endangering the welfare of children and upon conviction shall be sentenced as provided in subsection (5)(a).

(5) (a) Except as provided in subsection (5)(b), a person convicted of endangering the welfare of children shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. A person convicted of a second offense of endangering the welfare of children shall be fined an amount not to exceed \$1,000 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

(b) (i) A person convicted under subsection (3) is guilty of a felony and shall be imprisoned in the state prison for a term not to exceed 5 years and may be fined an amount not to exceed \$10,000, or both. If a child suffers serious bodily injury, the offender shall be fined an amount not to exceed \$25,000 or be imprisoned for a term not to exceed 10 years, or both. Prosecution or conviction of a violation of subsection (3) does not bar prosecution or conviction for any other crime committed by the offender as part of the same conduct.

(ii) Unless a greater penalty applies as provided in Title 46, chapter 18, if the victim is a minor, a teacher who is convicted of a violation of subsection (2)(a)(ii) or (2)(b)(ii) of this section shall be punished as provided in [section 12].

(6) On the issue of whether there has been a violation of the duty of care, protection, and support, the following, in addition to all other admissible evidence, is admissible: cruel treatment; abuse; infliction of unnecessary and cruel punishment; abandonment; neglect; lack of proper medical care, clothing, shelter, and food; and evidence of past bodily injury.

(7) The court may order, in its discretion, any fine levied or any bond forfeited upon a charge of endangering the welfare of children paid to or for the benefit of the person or persons whose welfare the defendant has endangered."

Section 10. Section 45-5-625, MCA, is amended to read:

"45-5-625. Sexual abuse of children. (1) A person commits the offense of sexual abuse of children if the person:

(a) knowingly employs, uses, or permits the employment or use of a child in an exhibition of sexual conduct, actual or simulated;

(b) knowingly photographs, films, videotapes, develops or duplicates the photographs, films, or videotapes, or records a child engaging in sexual conduct, actual or simulated;

(c) knowingly, by any means of communication, including electronic communication, persuades, entices, counsels, or procures a child under 16 years of age or a person the offender believes to be a child under 16 years of age to engage in sexual conduct, actual or simulated;

(d) knowingly processes, develops, prints, publishes, transports, distributes, sells, exhibits, or advertises any visual or print medium, including a medium by use of electronic communication in which a child is engaged in sexual conduct, actual or simulated;

(e) knowingly possesses any visual or print medium, including a medium by use of electronic communication in which a child is engaged in sexual conduct, actual or simulated;

(f) finances any of the activities described in subsections (1)(a) through (1)(d) and (1)(g), knowing that the activity is of the nature described in those subsections; or

(g) possesses with intent to sell any visual or print medium, including a medium by use of electronic communication in which a child is engaged in sexual conduct, actual or simulated.

(2) (a) Except as provided in subsection (2)(b), (2)(c), (2)(d), or (4), a person convicted of the offense of sexual abuse of children shall be punished by life imprisonment or by imprisonment in the state prison for a term not to exceed 100 years and may be fined not more than \$10,000.

(b) Except as provided in 46-18-219, if the victim is under 16 years of age, a person convicted of the offense of sexual abuse of children shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than \$10,000.

(c) Except as provided in 46-18-219, a person convicted of the offense of sexual abuse of children for the possession of material, as provided in subsection (1)(e), shall be fined not to exceed \$10,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

(d) Unless a greater penalty applies as provided in Title 46, chapter 18, if the victim is a minor, a teacher who is convicted of a violation of this section shall be punished as provided in [section 12].

(3) An offense is not committed under subsections (1)(d) through (1)(g) if the visual or print medium is processed, developed, printed, published, transported, distributed, sold, possessed, or possessed with intent to sell, or if the activity is financed, as part of a sexual offender information or treatment course or program conducted or approved by the department of corrections.

(4) (a) If the victim was 12 years of age or younger and the offender was 18 years of age or older at the

1 time of the offense, the offender:

2 (i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not
3 suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this
4 subsection (4)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender
5 is not eligible for parole.

6 (ii) may be fined an amount not to exceed \$50,000; and

7 (iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and
8 behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

9 (b) If the offender is released after the mandatory minimum period of imprisonment, the offender is
10 subject to supervision by the department of corrections for the remainder of the offender's life and shall participate
11 in the program for continuous, satellite-based monitoring provided for in 46-23-1010.

12 (5) As used in this section, the following definitions apply:

13 (a) "Electronic communication" means a sign, signal, writing, image, sound, data, or intelligence of any
14 nature transmitted or created in whole or in part by a wire, radio, electromagnetic, photoelectronic, or
15 photo-optical system.

16 (b) "Sexual conduct" means:

17 (i) actual or simulated:

18 (A) sexual intercourse, whether between persons of the same or opposite sex;

19 (B) penetration of the vagina or rectum by any object, except when done as part of a recognized medical
20 procedure;

21 (C) bestiality;

22 (D) masturbation;

23 (E) sadomasochistic abuse;

24 (F) lewd exhibition of the genitals, breasts, pubic or rectal area, or other intimate parts of any person;

25 or

26 (G) defecation or urination for the purpose of the sexual stimulation of the viewer; or

27 (ii) depiction of a child in the nude or in a state of partial undress with the purpose to abuse, humiliate,
28 harass, or degrade the child or to arouse or gratify the person's own sexual response or desire or the sexual
29 response or desire of any person.

30 (c) "Simulated" means any depicting of the genitals or pubic or rectal area that gives the appearance of

1 sexual conduct or incipient sexual conduct.

2 (d) "Visual medium" means:

3 (i) any film, photograph, videotape, negative, slide, or photographic reproduction that contains or
4 incorporates in any manner any film, photograph, videotape, negative, or slide; or

5 (ii) any disk, diskette, or other physical media that allows an image to be displayed on a computer or other
6 video screen and any image transmitted to a computer or other video screen by telephone line, cable, satellite
7 transmission, or other method."

8

9 **Section 11.** Section 45-5-627, MCA, is amended to read:

10 **"45-5-627. Ritual abuse of minor -- exceptions -- penalty.** (1) A person commits the offense of ritual
11 abuse of a minor if the person purposely or knowingly and as part of any ceremony, rite, or ritual or of any training
12 or practice for any ceremony, rite, or ritual:

13 (a) (i) has sexual intercourse without consent with a person less than 16 years of age;

14 (ii) commits assault, aggravated assault, assault on a minor, or assault with a weapon against a victim
15 less than 16 years of age; or

16 (iii) kills a person less than 16 years of age;

17 (b) actually or by simulation tortures, mutilates, or sacrifices an animal or person in the presence of the
18 minor;

19 (c) dissects, mutilates, or incinerates a human corpse or remains in the presence of the minor;

20 (d) forces upon the minor or upon another person in the presence of a minor the ingestion or the external
21 bodily application of human or animal urine, feces, flesh, blood, bone, or bodily secretions or drugs or chemical
22 compounds;

23 (e) places a living minor or another living person in the presence of a minor in a coffin or open grave that
24 is empty or that contains a human corpse or remains; or

25 (f) threatens the minor or, in the presence of the minor, threatens any person or animal with death or
26 serious bodily harm and the minor reasonably believes that the threat will or may be carried out.

27 (2) This section does not apply to activities, practices, and procedures otherwise allowed by law.

28 (3) (a) Except as provided in 46-18-219, a person convicted of ritual abuse of a minor shall:

29 ~~(a)~~(i) for the first offense, be imprisoned in the state prison for a term of not less than 2 years or more
30 than 20 years and may be fined not more than \$50,000, or both; and

1 ~~(b)(iii)~~ for a second or subsequent offense, be imprisoned in the state prison for any term of not less than
2 2 years or more than 40 years and may be fined not more than \$50,000, or both.

3 **(b) Unless a greater penalty applies as provided in Title 46, chapter 18, if the victim is a minor, a teacher**
4 **who is convicted of a violation of subsection (1)(a)(i) of this section shall be punished as provided in [section 12].**

5 (4) In addition to any sentence imposed under subsection (3), after determining pursuant to 46-18-242
6 the financial resources and future ability of the offender to pay restitution, the court shall require the offender, if
7 able, to pay the victim's reasonable costs of counseling that result from the offense. The amount, method, and
8 time of payment must be determined in the same manner as provided for in 46-18-244."

9
10 **NEW SECTION. Section 12. Enhanced punishment for certain sexual offenses by teacher.** (1)
11 Unless a greater penalty applies because of another provision in the applicable sections or in this chapter, if the
12 victim is a minor, a teacher who is convicted of a violation of 45-5-502 through 45-5-505, 45-5-507, 45-5-602,
13 45-5-603, 45-5-622, 45-5-625, or 45-5-627 shall be punished by twice the amount of the fine or twice the term
14 of imprisonment as a person who is not a teacher.

15 (2) As used in this section, "teacher" means a full-time or part-time, paid or unpaid, instructor, student
16 teacher, teacher's aide, principal, assistant principal or other administrator, counselor, librarian, or librarian's aide
17 in a public or private primary or secondary school.

18
19 **NEW SECTION. Section 13. Codification instruction.** [Section 12] is intended to be codified as an
20 integral part of Title 46, chapter 18, part 2, and the provisions of Title 46, chapter 18, part 2, apply to [section 12].

21 - END -